

Office Supreme Court, U. S.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1922.

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**No. 463.**

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GEORGIA RAILWAY & POWER CO., GEORGIA RAIL-  
WAY & ELECTRIC CO., R. C. HACKMAN ET AL.,  
PLAINTIFFS IN ERROR AND PETITIONERS IN CERTIORARI,  
*versus*  
THE TOWN OF DECATUR, DEFENDANT IN ERROR AND  
RESPONDENT IN CERTIORARI.

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**SUPPLEMENTAL BRIEF FOR DEFENDANT  
IN ERROR.**

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Counsel for the Town of Decatur desire to add to their brief  
the following authorities under the respective captions here-  
inafter referred to, to wit:

Caption I, Page 12.

Defiance Water Co. *vs.* Defiance, 191 U. S., 184.

Northern Pacific Ry. Co. *vs.* Solum, 247 U. S., 477.

Also the following:

Northern Pacific R. R. Co. *vs.* Ellis, 144 U. S., 458.  
 Great Western Tel. Co. *vs.* Burnham, 162 U. S., 339.  
 Mutual Life Ins. Co. *vs.* Kirchoff, 169 U. S., 103.  
 Yazoo and Miss. Valley Ry. Co. *vs.* Adams, 180  
 U. S., 1.

How constitutional question raised a matter of State practice:

N. C. R. Co. *vs.* Zachary, 232 U. S., 248.  
 L. & N. R. Co. *vs.* Woodford, 234 U. S., 46.  
 Laffitte *vs.* Burke, 113 Ga., 1000.  
 Savannah, Fla. and Western Ry. Co. *vs.* Hardin, 110  
 Ga., 433 (1).  
 Carswell *vs.* Wright, 133 Ga., 714 (4).

#### Caption II, Page 14.

Tippecanoe County *vs.* Lucas, 93 U. S., 108.  
 Mower *vs.* Fletcher, 114 U. S., 127.  
 Atherton *vs.* Fowler, 91 U. S., 143.  
 Moody *vs.* Muscogee Mfg. Co., 134 Ga., 730.  
 Booth *vs.* State, 131 Ga., 756.

Binding effect of prior decree a State matter:

King *vs.* West Va., 216 U. S., 92.

Brief, page 16, Caption IV:

See City of Mitchell *vs.* Telephone Co., 25 S. Dak., 409,  
 the consent clause of the Constitution, p. 415, being the  
 same as in the Georgia Constitution.

4 McQuillan on Municipal Corp., §1644, p. 3446, and  
 §1738, p. 3719.

Brief, page 22, Caption IV (b):

*Allegheny City vs. Railway*, 159 Pa. St. R., 416, where the court says, referring to the city's consent power: "I have the sole and exclusive power to consent or refuse; on certain conditions I consent, otherwise I refuse. I don't compel you to do anything; I merely give you a choice between alternatives. You have no power or right to demand my consent; you ask it, and I give it on my own terms or not at all."

Brief, page 39, Caption VI:

*City of Scranton vs. Public Service Commission*, 268 Pa. St. R., 192. Especial attention is directed to this case, because the consent clause of Pennsylvania Constitution, p. 194, and the constitutional provision forbidding the abridgement of the police power, page 197, are identical with the provisions of Georgia Constitution on the same subjects. See sections 6448 and 6464 of Park's Ann. Code.

See also:

*Chicago, B. & Q. R. R. vs. Nebraska*, 170 U. S., 57;  
*Puget Sound Traction Co. vs. Reynolds*, 244 U. S.,  
 575;  
*Woodburn vs. Public Service Commission*, 82 Ore.,  
 114,

where, on page 127, a very clear distinction is made between the right of the State to regulate rates under its police power and the contractual right of a city in reference to rates in the following language: "The right of the State to regulate rates by compulsion is a police power, and must not be confused with the right of a city to exercise its contractual power to agree with a public service company upon the terms of a

franchise. The exercise of a power to fix rates by agreement does not include or embrace any portion of the power to fix rates by compulsion. When Woodburn granted the franchise to the telephone company, the city exercised its municipal right to contract, and it may be assumed that the franchise was valid and binding upon both parties until such time as the State saw fit to speak; but the city entered into the contract subject to the reserved right of the State to employ its police power and compel a change of rates, and when the State did speak, the municipal power gave way to the sovereign power of the State."

Brief, page 41, Caption VII:

Under the proposition stated on page 42 to the effect that the whole body of rates must be considered and not the rate on a segregated line.

Puget Sound Traction Co. *vs.* Reynolds, 244 U. S., 574, distinguishing Northern Pacific Ry. Co. *vs.* North Dakota, 236 U. S., 585, and other cases cited on page 51 of brief of plaintiffs in error.

Caption X, Page 52.

Validity of State statute; decision by State court is final:

Smith *vs.* Jennings, 206 U. S., 276.

State of Montana *vs.* Rice, 204 U. S., 291.

## Caption XIV, Page 61. .

Macon Railway and Light Co. *vs.* Corbin *et al.*, No. 3011,  
in Supreme Court of Georgia, recently decided. (See certi-  
fied copy of opinion.)

Respectfully submitted.

FRANK HARWELL,  
J. HOWELL GREEN,  
*Of Counsel for Town of Decatur.*

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